

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Title: Guidance on Definition of "Source" for Collocated Activities

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Brief Description of Subject Matter: Interprets the terms "major source" under the Title V rules

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The first step in determining Title V applicability is determining whether the potential to emit from all of the air pollutant emitting activities of a source meets or exceeds Title V applicability thresholds. The cornerstone to this analysis is determining which activities should be grouped together and characterized as a single source for purposes of determining potential to emit and for coverage of Title V permit conditions. The Clean Air Act, the federal Part 70 rules and the Indiana Title V rules define the term "source" based on several factors. In many cases, whether activities are a single "source" will be highly fact dependent. This guidance will describe the statutory definition of a source and several tests used to make the determination in an individual case. Although source determinations for Title V purposes are generally fact-sensitive, the concepts outlined in this guidance will help sources make such determinations and understand the IDEM's approach to source determinations.

The Clean Air Act defines major source of Hazardous Air Pollutants (HAPs) as all activities located on contiguous area under common control where the aggregate potential to emit for the activities exceeds ten (10) tons per year of a single HAP or twenty-five (25) tons per year of a combination of HAPs. A listing of HAPs is located in Section 112(b) of the Clean Air Act. A major source of any other regulated air pollutant is defined as all activities located on contiguous or adjacent property under common control of the same person (or persons under common control) belonging to a single industrial grouping where the aggregate potential to emit for the activities exceeds the applicable Title V threshold.

For both types of major sources the relevant factors for determining which activities qualify as part of the source are whether the activities are located on contiguous or adjacent property and whether common control over the activities exists. For major sources of pollutants other than HAPs, the activities must also belong to the same industrial grouping.

1. Activities must be located on contiguous or adjacent property

The first factor is whether the activities are located on contiguous or adjacent property.

- properties that actually abut at any point would satisfy the requirement of contiguous or adjacent property.
- properties that are separated by a public road or public property would satisfy this requirement, absent special circumstances.
- other scenarios would be examined on an individual basis with the focus on the distance between the activities and the relationship between the activities.

2. Activities must be under common control

The second factor relevant to this analysis is whether the activities are under common control. If the activities are owned by the same person or entity, common control exists. Common ownership may exist in several forms.

- if a third party has ownership of fifty-one percent (51%) or more in each of two (2) or more entities, common ownership exists.
- if two (2) or more entities share common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operations of the entities, common ownership exists.
- if one entity has fifty-one percent (51%) or greater ownership of another entity, common ownership exists.

Absent common ownership, common control may still exist. The IDEM endorses two tests for determining whether common control exists without common ownership. Both tests examine the relationship between the entities. If either test is satisfied, common control exists.

a. *Two-pronged test to determine common control.*

The first test focuses on whether one activity is an auxiliary activity which directly serves the purpose of another primary activity and whether the owner or operator of the primary activity has a major role in the day-to-day operations of the auxiliary activity. An auxiliary activity directly serves the purpose of a primary activity by supplying a necessary raw material to the primary activity or performing an integral part of the production process for the primary activity.

Day-to-day control of the auxiliary activity by the primary activity is evidenced by several factors. The following is an illustrative list:

- is a majority of the output of the auxiliary activity provided to the primary activity?
- can the auxiliary activity contract to provide its products/services to a third-party without the consent of the primary activity?
- can the primary activity assume control of the auxiliary activity under certain circumstances?
- is the auxiliary activity required to complete periodic reports to the primary activity?

If one or a combination of these questions is answered affirmatively, common control may exist.

b. *But/for test to determine common control*

The second test relevant to determining common control absent common ownership is the but/for test. This test focuses on whether the auxiliary activity would exist absent the needs of the primary activity. If all or a majority of the output of the auxiliary activity is consumed by the primary activity the but/for test is satisfied.

3. For major source of pollutants other than HAPs, the activities must belong to the same industrial grouping.

Two tests exist for determining whether activities belong to the same industrial grouping.

a. *Same Standard Industrial Classification Code*

If the activities are assigned the same two-digit Standard Industrial Classification (SIC) code as described in the 1987 SIC Manual, the activities belong to the same industrial grouping.

b. *Support facility test*

Absent the same two-digit SIC code, activities may belong to the same industrial grouping if one activity can be characterized as a support activity for a primary activity. Support facilities convey, store or otherwise assist in the production of the principal product or group of products produced or distributed or services rendered. The status of an activity as a support facility is established by examining the relationship between the functions performed by the secondary activity and the products produced or distributed or services rendered by the primary activity.